N.B. In this case a decision was quoted, *Douglas* against *Douglas*, observed by Home, 22d July 1724; where it was found, that an obligation in a contract of marriage to resign against a certain time, for new infeftment, to the heirs of the marriage in fee, reserving the husband's liferent, made the heir a creditor, and preferred him, having used inhibition, to a posterior purchaser: and this seemed to be held good law.

1750. *November* 6. HAMILTONS *against* WEIR.

[Elch. No. 19, *Tutor;* Kilk, No. 14, *ibid.*]

Two tutors administered ill and were both removed as suspect. One of them only acted, and there was evidence that he had acted fraudulently, as well as negligently. The other was an easy, indolent man, that let his co-tutor do what he pleased. The acting tutor was condemned to pay the pupil a considerable sum of money, chiefly on account of some debts which he had suffered to be lost by neglect of doing diligence. He now seeks relief for a proportionable part against the heirs of the defunct co-tutor. The Lords found, 1*mo*, that the action for relief lay against heirs, because, though a malefice had given occasion to the action, the obligation upon the defunct (if there was any,) arose not from a malefice, but from a contract, or *quasi* contract. 2*do*, That the defunct was bound in relief, though he never acted,—was not alleged to be partaker of the other's fraud,—and though supposing he had, it may be questioned whether there be any relief among thieves. 3*tio*, That the acting tutor was entitled to relief for one half of an article of personal expenses, laid out in managing the pupil's affairs, which he was not allowed in counting with the pupil, in consequence of the Act of Parliament. *Dissent.* Elchies.

Though the act speaks of expenses in general, yet it has been so construed as to mean only personal expenses, not expenses bestowed necessarily on the minor's subjects.

Actor, Geo. Brown. *Alter*, Lockhart.

1750. *November* 13. Claim, CAPTAIN JOHN GORDON *against* HIS MAJESTY.

[Elch. No. 39, *Tailyie.*]

In this case there were three points, 1*mo*, whether an irritancy of an entail could be declared against the crown, after the forfeiture of the person irritating: and the Lords found, unanimously, (Dun only excepted,) notwithstanding the opinion they had declared in the case of Charteris,—(see the decision, July 4th, 1749,)—that it could not, upon this ground, that the words of the entail notwithstanding, there is no irritancy with us *ipso facto;* that it only takes place upon declarator; that, till declarator, any deed done by the committer of the irritancy,